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An Act To Reduce Prescription Drug Costs by Using International Pricing

Received by the Secretary of the Senate on May 3, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CLAXTON of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA c. 603, sub-c. 1-C** is enacted to read:

3 **SUBCHAPTER 1-C**

4 **PRESCRIPTION DRUG PRICING**

5 **§2688. International pricing**

6 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "ERISA plan" means a plan qualified under the federal Employee Retirement
9 Income Security Act of 1974.

10 B. "Health plan" has the same meaning as in Title 24-A, section 4301-A, subsection
11 7.

12 C. "Participating ERISA plan" means an ERISA plan that has elected to participate in
13 the requirements and restrictions of this section as described in subsection 3.

14 D. "Prescription drug" has the same meaning as in Title 32, section 13702-A,
15 subsection 30.

16 E. "Referenced drugs" means prescription drugs subject to a referenced rate.

17 F. "Referenced rate" means the maximum rate established by the Superintendent of
18 Insurance using the wholesale acquisition cost and other pricing data described in
19 subsection 4.

20 G. "State entity" means any agency of State Government that purchases prescription
21 drugs on behalf of the State for a person whose health care is paid for by the State,
22 including any agent, vendor, fiscal agent, contractor or other party acting on behalf of
23 the State. "State entity" does not include the medical assistance program established
24 under 42 United States Code, Section 1396 et seq.

25 H. "Wholesale acquisition cost" has the same meaning as in 42 United States Code,
26 Section 1395w-3a.

27 **2. Payment in excess of referenced rate prohibited.** The following practices are
28 prohibited.

29 A. It is a violation of this section for a state entity or health plan or participating ERISA
30 plan to purchase referenced drugs to be dispensed or delivered to a consumer in the
31 State, whether directly or through a distributor, for a cost higher than the referenced
32 rate as determined in subsection 4. Contracts entered into by a state entity or health
33 plan or participating ERISA plan and a 3rd party for the purchase of prescription drugs
34 shall expressly provide that rates paid for referenced drugs may not exceed the
35 referenced rate.

36 B. It is a violation of this section for a retail pharmacy licensed in this State to purchase
37 for sale or distribution to a person whose health care is provided by a state entity or

1 health plan or participating ERISA plan a referenced drug for a cost that exceeds the
2 referenced rate.

3 **3. ERISA plan opt-in.** An ERISA plan may elect to participate in the provisions of
4 this section. Any ERISA plan that desires its purchase of prescription drugs to be subject
5 to the prohibition described in subsection 2 shall notify the Superintendent of Insurance in
6 writing by December 15th of each year.

7 **4. Referenced drugs determined.** The following provisions govern the determination
8 of referenced drugs.

9 A. By April 30th of each calendar year, the Executive Director of Health Insurance in
10 the Department of Administrative and Financial Services, Bureau of Human
11 Resources, Division of State Employee Health Insurance shall transmit to the
12 Superintendent of Insurance a list of the 250 most costly prescription drugs based upon
13 net price times utilization. For each of these prescription drugs, the Executive Director
14 of Health Insurance shall also provide the total net spent on each of those prescription
15 drugs for the previous calendar year.

16 B. Using the information described in paragraph A, by June 30th of each year the
17 Superintendent of Insurance shall create and publish a list of 250 referenced drugs that
18 are subject to the referenced rate.

19 C. The Superintendent of Insurance shall determine the referenced rate by comparing
20 the wholesale acquisition cost to the cost in official publications of the governments of
21 the Canadian provinces of Ontario, Quebec, British Columbia and Alberta,

22 D. The referenced rate for each prescription drug must be calculated as the lowest cost
23 among the resources described in paragraph C and the wholesale acquisition cost. If a
24 specific referenced drug is not included within resources described in paragraph C, the
25 Superintendent of Insurance shall use for the purpose of determining the referenced
26 rate the ceiling price for drugs as reported in official publications of the government of
27 Canada.

28 E. The determination by the Superintendent of Insurance of which prescription drugs
29 to include on the list of referenced drugs must be based upon an analysis of the savings
30 that could be achieved by subjecting those prescription drugs to the referenced rate. In
31 making this determination, the Superintendent of Insurance shall consult with the
32 Executive Director of Health Insurance and the president of the Maine Board of
33 Pharmacy.

34 F. The Superintendent of Insurance may adopt rules to carry out the purposes of this
35 subchapter. Rules adopted pursuant to this paragraph are routine technical rules under
36 Title 5, chapter 375, subchapter 2-A.

37 **5. Registered agent and office within State.** Any entity that sells, distributes,
38 delivers or offers for sale any prescription drug in the State shall maintain a registered agent
39 and office within the State.

40 **6. Use of savings.** The following provisions govern the use of savings generated as a
41 result of the requirements in subsection 2.

1 A. Any savings generated as a result of the requirements in subsection 2 must be used
2 to reduce costs to consumers. A state entity, health plan or participating ERISA plan
3 shall calculate its savings and use the savings directly to reduce costs for its members.

4 B. No later than April 1st of each calendar year, each state entity, health plan and
5 participating ERISA plan subject to this section shall submit to the Superintendent of
6 Insurance a report describing the savings achieved for each referenced drug for the
7 previous calendar year and how those savings were used to achieve the requirements
8 of paragraph A.

9 **7. Enforcement.** Each violation of this section is subject to a fine of \$1,000. Each
10 individual transaction in violation of subsection 2 is a separate violation. The Attorney
11 General is authorized to enforce the provisions of this section on behalf of any state entity
12 or consumers of prescription drugs.

13 **8. Prohibition on withdrawal of referenced drugs for sale.** The following
14 provisions govern the withdrawal of a referenced drug.

15 A. It is a violation of this section for any manufacturer or distributor of a referenced
16 drug to withdraw that drug from sale or distribution within this State for the purpose of
17 avoiding the effect of the rate limitations set forth in subsection 2.

18 B. Any manufacturer that intends to withdraw a referenced drug from sale or
19 distribution from within the State shall provide a notice of withdrawal in writing to the
20 Superintendent of Insurance and to the Attorney General 180 days prior to such
21 withdrawal.

22 C. The Superintendent of Insurance shall assess a penalty of \$500,000 on any entity,
23 including any manufacturer or distributor of a referenced drug, that the superintendent
24 determines has withdrawn a referenced drug from distribution or sale in the State in
25 violation of paragraphs A or B.

26 **Sec. 2. Purpose; legislative findings.** The purpose of this Act is to protect the
27 safety, health and economic well-being of the people of this State by safeguarding them
28 from the negative and harmful effects of excessive and unconscionable prices for
29 prescription drugs. In enacting this section, the Legislature finds that:

30 1. Access to prescription drugs is necessary for the people of this State to maintain or
31 acquire good health;

32 2. Excessive prices negatively affect the ability of the people of this State to obtain
33 prescription drugs, and price increases that exceed reasonable levels endanger the health
34 and safety of the people of this State;

35 3. Excessive prices for prescription drugs threaten the economic well-being of the
36 people of this State and endanger their ability to pay for other necessary and essential goods
37 and services, including housing, food and utilities;

38 4. Excessive prices for prescription drugs contribute significantly to a dramatic and
39 unsustainable rise in health care costs and health insurance that threaten the overall ability
40 of the people of this State to obtain health coverage and maintain or acquire good health;

41 5. Excessive prices for prescription drugs contribute significantly to rising state costs
42 for health care provided and paid for through health insurance programs for public
43 employees, including employees of the State, municipalities and counties, school districts,

1 institutions of higher education and retirees whose health care costs are funded by public
2 programs, thereby threatening the ability of the State to fund those programs adequately
3 and further threatening the ability of the State to fund other programs necessary for the
4 public good and safety, such as public education and public safety;

5 6. Because the costs of prescription drugs and health insurance are tax-deductible,
6 excessive costs for prescription drugs result in a reduction in the tax base and a consequent
7 reduction in state revenue;

8 7. The costs to consumers, health plans and the State for prescription drug coverage is
9 higher than the costs in other countries because the prices charged by manufacturers and
10 distributors of drugs in this State are higher; and

11 8. Based on findings in subsections 1 to 7, the Legislature finds that excessive prices
12 for prescription drugs threaten the safety and well-being of the people of this State and
13 finds it is necessary to act in order to protect the people of this State from the negative
14 effects of excessive costs.

15 **SUMMARY**

16 This bill requires the Superintendent of Insurance to create a list of 250 referenced
17 drugs that are subject to a referenced rate. The referenced rate must be calculated as the
18 lowest cost from official publications of certain Canadian provincial government agencies
19 and the wholesale acquisition cost. A state entity, health plan or participating plan qualified
20 under the federal Employee Retirement Income Security Act of 1974 must purchase
21 referenced drugs to be dispensed or delivered to a consumer of this State at a cost equal to
22 or lower than the referenced rate. Any savings generated as a result must be used to reduce
23 costs to consumers.